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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/734,536

12/12/2003

Donald J. White JR.

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07/14/2006

THE PROCTER & GAMBLE COMPANY  
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EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/734,536	<b>Applicant(s)</b> WHITE ET AL.	
	<b>Examiner</b> Lezah W. Roberts	<b>Art Unit</b> 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-9 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

This action is in response to the amendment filed May 1, 2006. All rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claims*

#### **Claim Rejections - 35 USC § 102 – Anticipation**

1) Claims 1, 2, 3, 5 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Glandorf (US 6,187,295). The rejection is maintained.

A) Applicant argues Glandorf's linear condensed polyphosphates are not included in the instant claims. Although this is correct, the reference does disclose polyethylene glycol (example VII) (as stated in the prior office action), a class of polymers included in amended claim 1. The amount of polyethylene glycol incorporated into Glandorf's compositions, which ranges from 1.5 to 3% by weight of the composition, is substantially the same amount as disclosed by the Applicant, which may range from 1 to 35%, appears to be a sufficient amount to give the compositions the inherent properties recited in the instant claims, such as depositing a polymeric surface active film that increase hydrophilic character and provide smooth teeth perception.

B) The Applicant also argues Glandorf does not disclose the present claims anionic polymers that deposit a polymeric film onto oral surfaces, much less that such

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deposited polymeric film would result in a surface with increased hydrophilic character and even less that such hydrophilic surface would provide desirable clean teeth and smooth teeth perception that would last for extended periods of time. The reference uses polyethylene glycol, a polymer Applicant discloses as an anionic polymer. The instant claims recite an oral composition. The characteristics of the compositions appear to be based on the recited polymers, therefore an oral composition with these polymers will inherently have these characteristics whether the characteristics are taught by the reference or not.

2) Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Zerby et al. (US 5,451,401). The rejection is maintained.

A) Applicant argues Zerby's phosphonates are not polymeric and does not disclose the present polymeric materials containing repeating monomeric unit with anionic functionality. Although the phosphonates are not polymeric the other compounds used in Zerby's compositions are. The reference teaches polyphosphonates may be use as substitutes for the phosphonates and even gives a list of suitable polyphosphonates that may be incorporated (col. 4). Additionally, as stated in the prior office action "various anionic polymeric polycarboxylates and their complexes may also be used in the taught dental compositions (col. 8, lines 49-55)". The reference also discloses a working example comprising carboxymethyl cellulose, which is a carboxy-substituted polymer as recited in amended claim 1. The amount of polyphosphonates and carboxymethyl cellulose that may be incorporated into Zerby's

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compositions ranges from 0.001% to 25% by weight of the composition (col. 5, lines 64-68) and 0.300 (Example I) respectively, is substantially the same amount as disclosed by the Applicant, which may range from 1 to 35% (in the case of the polyphosphonates), appears to be a sufficient amount to give the compositions the inherent properties recited in the instant claims, such as depositing a polymeric surface active film that increases hydrophilic character and provides smooth teeth perception.

B) The Applicant also argues Zerby does not disclose the present claims anionic polymers that deposit a polymeric film onto oral surfaces, much less that such deposited polymeric film would result in a surface with increased hydrophilic character and even less that such hydrophilic surface would provide desirable clean teeth and smooth teeth perception that would last for extended periods of time. Zerby does in fact disclose anionic polymers (carboxymethyl cellulose). The instant claims recite an oral composition. The characteristics of the compositions appear to be based on the recited polymers, therefore an oral composition with these polymers will inherently have these characteristics whether the characteristics are taught by the reference or not.

### **Obvious-Type Double Patenting**

Claims 1-6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of U.S. Patent No. 6,821,507. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both read on oral composition comprising a polymeric surface-active agent, stannous ions and a fluoride source. The rejection is maintained.

Applicant argues the patented claims "are directed to a composition comprising the combinations of a stannous source, a fluoride source and a polymeric surface active agent, wherein the stannous provides antimicrobial activity effective for reducing plaque and gingivitis. The instant claims are directed to a composition wherein the polymeric surface active agent provides surface condition effects to a subject's teeth and mucosal surfaces and does not require either stannous or fluoride". The two sets of claims still pertain to an oral composition. The main difference being the patented claims recite the benefit of the stannous compound and the instant claims recite the benefit of the polymeric surface-active agent. In regards to the stannous not being required, the dependent claims 5-6 recites the compositions comprise stannous making it a required compound for the compositions. The instant disclosure states the stannous may be provided by stannous fluoride and the instant claims uses comprising which is open to other component such as fluoride. The components of the instant dependent claims with the polymeric surface-active agent of the instant independent claim make the compositions of the instant claims and the compositions of the patented claim substantially the same.

Claims 1-2 and 4-6 are rejected.

Claim 3 is cancelled.

Claims 7-9 are withdrawn.

No claims allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

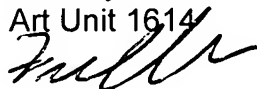
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts  
Patent Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read "Leah Roberts", with a long horizontal flourish extending to the right.

Frederick Krass  
Primary Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read "Frederick Krass", with a long horizontal flourish extending to the right.